This necessitates an implied request by the promisor that such liability be incurred — an implication of fact, not usually justifiable. *Presbyterian Church* v. *Cooper*, 112 N. Y. 517. If a request can be inferred from the subscriber's promise, it would seem that entire performance and not merely a beginning of the contemplated undertaking would be requisite to complete the unilateral contract. Where there has been an express request however, there is of course no difficulty in enforcing the subscription after performance by the beneficiary. On this ground the principal case might possibly have been rested. Cf. *Barnes* v. *Perine*, 12 N. Y. 18.

Although on strict theory a charitable subscription can seldom be construed as a binding contract, it is eminently desirable in many cases that such subscriptions, although gratuities, should be enforced, as numerous worthy institutions are absolutely dependent upon them. Such enforcement, however, if it is to rest upon consistent and rational grounds must be obtained through suitable enactment by state legislatures, and not through judicial legislation, which violates the fundamental principles of contracts.

LEGAL PROTECTION TO UNBORN CHILDREN. — By Lord Campbell's Act, where death has resulted from a wrong which would have entitled the injured party to sue had he lived, a cause of action is given to his administrator or next of kin. Under a similar statute the death of a child caused by its premature birth for which the defendant was responsible was held to give no cause of action, as the child could not have sued if it had survived. *Gorman* v. *Budlong*, 49 Atl. Rep. 704 (R. I.). It is true that a child harmed before birth has been invariably denied redress by the courts, on the ground that rights belong only to persons and that an unborn child is not a person. *Walker* v. *Great Northern Ry. Co.*, L. R. (Ir.) 28 Q. B. & Ex. Div. 69; *Allaire* v. *St. Luke's Hospital*, 184 Ill. 359. The plaintiffs seem never to dispute this reasoning, but they rely on that rule governing the distribution of property, that a child is to be considered born if it is for its benefit to be so considered. The decisions however must be taken to settle beyond pertinent discussion that to apply this rule as suggested is either to make the defendant a tort-feasor by a fiction, or substantially to change the convenient and fundamental rule that fixes birth as the precise point at which existence as a person begins. See 12 HARVARD LAW REVIEW 209. If then a child permanently crippled a moment before its birth by a careless *accoucheur* or even by an intentional wrong-doer is to have a remedy, it must be on some other ground.

One conceivable theory involves no sacrifice of legal principle. At the moment of birth the rule that an unborn child has no rights ceases to affect the case. If the child at birth acquires as a legal person a specific right to begin life with a sound body, violation of that right is a tort. To allow an action on the case would not be to declare that an unborn child is a person or has rights, but to ascribe to every born child a right of bodily integrity. The right so defined has never been judicially recognized. It is peculiar in being broken as soon as it comes into existence, and necessarily some considerable time after the defendant's original fault was committed. Its peculiarities however are common to the right to means of support conceived by courts which give a

posthumous child damages for the wrongful killing of its father. See *The George and Richard*, L. R. 3 A. & E. 466; *cf. Quinlen* v. *Welch*, 69 Hun 584.

In view of the serious abuses which might result, the expediency of recognizing a legal right of the sort described is doubtful. On the difficult question of cause the mother may incline to romancing and the jury to superstition. *Gorman* v. *Budlong*, *supra*, shows an additional danger likely to be frequent. The child has died soon after birth. If it has suffered a tort an action by the next of kin, though perhaps not contemplated by the framers of Lord Campbell's Act, is strictly within its provisions; and substantial verdicts often undeserved may result. In many such cases recovery could be refused only on the ground that these abuses render it inexpedient to recognize at all the right of bodily integrity. Whether this ground should be taken, it is submitted, is the real question.

RECENT CASES.

ADMIRALTY — MASTER OF A DREDGE — LIEN FOR WAGES. — A libel for wages was filed against a dredge. The libellant was licensed as master, had full charge of the dredge, and performed the usual duties of a master except that he received no money for the owners. He also acted as engineer, fireman, and general deck hand. *Held*, that he was not a master within the rule that a master has no lien upon his vessel for wages. *The John McDermott*, 109 Fed. Rep. 90 (Dist. Ct., Conn.).

In England originally contracts of mariners for wages were not regarded as maritime contracts. See *De Lovio* v. *Boit*, 2 Gall. 398, 453. Therefore neither masters nor men could proceed in admiralty for their wages. When, later, seamen were allowed a lien enforceable in admiralty, the privilege was still denied to masters on the ground that they contracted with the ship-owner personally. *Clay* v. *Snelgrove*, Carth. 518. In the United States, likewise, a master has no lien. *Steamboat Orleans* v. *Phoebus*, 11 Pet. 175. His contract for wages, however, is regarded as maritime and within the admiralty jurisdiction. *Willard* v. *Dorr*, 3 Mason 91. Further, it has been held in this country that the fact of contracting directly with the owner does not prevent the acquisition of a lien. *The Carlotta*, 30 Fed. Rep. 378. Thus the principal reasons given in the English cases for denying the master a lien and for distinguishing between masters and seamen, have been swept away, while the distinction is retained. The courts have therefore shown a not unnatural tendency to limit the class of masters as narrowly as possible, and while the principal case lays down no satisfactory test, its result is hardly to be regretted. In England the distinction is now abolished by statute.

BANKRUPTCY — PREFERENCES — SURRENDER. — A creditor knowingly received a preference voidable under the Bankruptcy Act of 1898, § 60 *b*, and refused to give it up till compelled to do so under a judgment obtained by the trustee. *Held*, that he could not thereafter prove his claim against the bankrupt's estate. *In re Owings*, 109 Fed. Rep. 623 (Dist. Ct., W. D. Mo.).

The Bankruptcy Act of 1898 provides (§ 57 *g*) that "the claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences." There is yet little authority as to what constitutes a surrender under this provision, but the tendency seems to be toward the rule of the principal case. *In re Beiber*, 2 N. B. N. Rep. 943; see *In re Keller*, 3 N. B. N. Rep. 845; *contra*, *In re Baker*, 2 N. B. N. Rep. 195. It was well established under the analogous provision in the Bankrupty Act of 1867, § 23, that surrender meant a voluntary act of the creditor and did not include payment under judgment. *In re Richter's Estate*, 4 N. B. R., 2nd ed., 221; *In re Leland*, 9 N. B. R. 209. That interpretation of the word seems accurate, for when the transfer of the preference has been invalidated by the